

**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME**

**INCIDENTAL TAKE PERMIT
PERMIT NO. 2081-1998-63-1**

AUTHORITY: This California Endangered Species Act ("CESA") Incidental Take Permit ("ITP") is issued by the Department of Fish and Game ("Department") pursuant to Fish and Game Code section 2081(b) and section 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783.

PERMITTEE: **PACIFIC LUMBER COMPANY, SCOTIA PACIFIC COMPANY LLC, AND SALMON CREEK CORPORATION (collectively, PALCO)**

PROJECT: **PACIFIC LUMBER COMPANY HABITAT CONSERVATION PLAN**

LOCATION: **HUMBOLDT COUNTY, CALIFORNIA**

PROJECT SUMMARY

PALCO has applied to the Department for authorization to take one or more species protected by CESA in the course of conducting specific covered activities (Covered Activities) in the plan area. The plan area covers approximately 211,700 acres in Humboldt County, California. This area is referred to and defined in the Implementation Agreement (February, 1999) (IA) for the Final Habitat Conservation Plan (February, 1999) (Final HCP) as the "Covered Lands." Over time it is anticipated that additional lands will become Covered Lands subject to the provisions of the Final HCP and the ITP, with certain specified exceptions, pursuant to Section 5 of the IA. Covered Activities, as defined in the IA, are as follows: (a) all activities relating to timber management, including timber harvest, site preparation, tree planting, vegetation management (with the exception of forest chemicals, i.e., herbicide, pesticide, and fertilizer use), thinning, and fire suppression; (b) rock extraction from borrow pits; (c) road construction, improvement, maintenance, and use; (d) scientific surveys and studies; (e) rock quarrying from PALCO's two commercial rock quarries; (f) all activities included within the Operating Conservation Program; and (g) with the exceptions noted above, all activities necessarily incident to such activities. These Covered Activities on the Covered Lands, as described in the Final Environmental Impact Report (January, 1999) (FEIR) prepared by the California Department of Forestry and Fire Protection (CDF) (SCH# 97012027) and in the Final HCP constitute the "Project" authorized by this ITP. In the event of a direct conflict between the Project as described in the FEIR and the Final HCP, the description in the Final HCP shall control.

PALCO is also obtaining a master Streambed Alteration Agreement under FGC Section 1603 (Notification No. 99-0075) (February, 1999) (Streambed Alteration Agreement), which is incorporated into the Final HCP's Operating Conservation Program, and is attached to the IA as Exhibit B.

COVERED SPECIES

The following species are known or expected to exist within the plan area during the term of the ITP and are covered by the HCP and IA:

A. State-Listed Species, subsequently referred to as "Listed Species":

- Marbled Murrelet (endangered)
- American Peregrine Falcon (endangered)
- Bald Eagle (endangered)
- Bank Swallow (threatened)

B. Fully Protected Species

- American Peregrine Falcon (also State-listed as endangered)
- Bald Eagle (also State-listed as endangered)

C. Unlisted Species

- Northern Spotted Owl
- Snowy Plover
- Pacific Fisher
- Red Tree Vole
- Chinook Salmon
- Coho Salmon
- Cutthroat Trout
- Steelhead
- Southern Torrent Salamander
- Red-legged Frog
- Yellow-legged Frog
- Tailed Frog
- Western Pond Turtle

The State-Listed Species, Fully Protected Species and Unlisted Species are collectively referred to in this ITP as the "Covered Species." Consistent with the FGC, take of Fully Protected Species is not authorized under this ITP. In addition, take of Unlisted Species is not authorized under this ITP until such time as such species is accepted as a candidate species under CESA.

ENVIRONMENTAL ANALYSIS

CDF has prepared a FEIR for the Project as the State lead agency under the California Environmental Quality Act (CEQA). Environmental analysis is provided in the FEIR and the Biological/Conference Opinion (No.1-14-99-18) prepared by the National Marine Fisheries Service and U.S. Fish and Wildlife Service. The FEIR describes the Project, contains life history information for the Covered Species, and identifies impacts on Covered Species. The Final HCP's Operating Conservation Program sets forth measures to: (1) avoid take of covered species when avoidance is either required by the FGC or is possible consistent with PALCO's objectives; (2) minimize take of Covered Species when take cannot be avoided entirely; and (3) fully mitigate anticipated take and other impacts on Covered Species.

The FEIR was certified by CDF on February 25, 1999.

SECTION 2081(b) INCIDENTAL TAKE AUTHORIZATION

Having determined that the measures identified in this ITP satisfy the requirements of Sections 2052.1, 2081(b) and 2081(c) of the FGC, as of the Effective Date, the Department authorizes PALCO and its officers, directors, employees, and agents to incidentally take marbled murrelets and bank swallows in carrying out the Project, subject to the following conditions of approval:

1. PALCO shall comply with all other applicable federal, state and local laws in existence on the Effective Date of this ITP or adopted thereafter.
2. PALCO shall fully implement and fully adhere to the conservation measures and prescriptions described in the Final HCP's Operating Conservation Program, or such measures and prescriptions as they may be modified through adaptive management pursuant to the Final HCP. The Final HCP is incorporated herein by reference and attached hereto as Exhibit A.
3. PALCO shall comply with the terms, conditions, and requirements of the IA for the Final HCP, including without limitation the funding and security requirements of Section 3.3 of the IA. The IA is incorporated herein by reference and attached hereto in Exhibit A as Attachment 5.
4. PALCO shall comply with all monitoring, reporting and other requirements in the Mitigation Monitoring and Reporting Program, which is incorporated herein by reference and attached hereto as Exhibit B.
5. This ITP may be amended without the concurrence of PALCO as required by law.

6. The Department may issue a written stop order for a violation or threatened violation of the ITP, in accordance with the procedure set forth in Section 5 of the Agreement Relating to Enforcement of AB 1986, signed by the Department on February 26, 1999, by and among the State of California, the Department, CDF, the California Resources Agency, the Wildlife Conservation Board and PALCO, which is attached hereto as Exhibit C.

This authorization allows PALCO to incidentally take marbled murrelets and bank swallows pursuant to Section 2081(b) of the FGC provided PALCO complies with the above conditions of approval. The Department expects that compliance with the above conditions of approval will likely avoid take of the bald eagle and American peregrine falcon which have dual status as Fully-Protected and State-Listed Species. Because PALCO has agreed to implement measures pursuant to the Final HCP and IA that will avoid, and/or minimize and fully mitigate impacts on the Unlisted Species, this ITP shall become effective as to each Unlisted Species upon its acceptance as a candidate species pursuant to Fish and Game Code section 2074.2, provided PALCO complies with the above conditions of approval. No additional CESA ITP or authorization shall be required by the Department to allow incidental take of such Covered Species from Covered Activities, unless it is determined in a court of law or by a binding administrative opinion (such as a formal opinion of the California Attorney General) that the Department is not authorized to cause the ITP to become effective automatically as to Covered Species that are not currently listed as described herein. In this event, the Department shall accept and give due consideration to the minimization and mitigation measures in this ITP in support of an application for a permit amendment or for a separate ITP, as necessary and lawful to permit take of such Covered Species for the remaining term of this ITP.

This ITP does not authorize PALCO to intentionally take any Covered Species, to take Covered Species as a result of activities outside the scope of the Project as described in the FEIR and Final HCP, or any take of Covered Species resulting from a permit violation.

SECURITY

To ensure adequate funding to carry out all mitigation, monitoring, and reporting obligations as required by FGC Section 2081(b), PALCO shall fully comply with the terms and conditions of Section 3.3 of the IA, until PALCO completes its obligations under the ITP.

EFFECTIVE DATE AND TERM OF PERMIT

This ITP shall be effective on the date following issuance by the Department and acknowledgment and signature of PALCO. The ITP shall take effect on the later of March 1, 1999, or the date the ITP is delivered to PALCO pursuant to the "Headwaters Escrow

Instructions" (Escrow No. 206816 of Fidelity National Title Company of 404 H Street, Eureka, California 95501); provided that if the ITP does not take effect on March 1, 1999, the ITP may be rescinded prior to the Effective Date upon the mutual agreement of PALCO and CDFG or by CDFG after a reasonable period of time and after advance written notice to PALCO. This ITP shall expire fifty (50) years after the Effective Date, with respect to timber management, including timber harvest, site preparation, tree planting, vegetation management (with the exception of forest chemicals, i.e., herbicide, pesticide, and fertilizer use), thinning, and fire suppression; road construction, improvement, maintenance and use; scientific surveys and studies; all activities included within the Operating Conservation Program; and with the exceptions noted in the IA, all activities necessarily incident to such activities. This ITP shall expire two (2) years after the effective date for rock quarrying from PALCO's two commercial rock quarries and five (5) years after the effective date for rock extraction from borrow pits.

PERMIT AMENDMENT, SUSPENSION, REVOCATION, ASSIGNMENT OR TRANSFER

This ITP may be amended, suspended, revoked, assigned or transferred in accordance with all applicable law; including without limitation, the Department's regulations that are in effect at the time of the action.

CEQA REVIEW

In accordance with the CEQA Guidelines (C.C.R., t.14, § 15096(b)), the Department, acting as a responsible agency assisted the CDF during the course of preparing the Sustained Yield Plan (SYP), Draft Environmental Impact Report (DEIR) and FEIR to ensure that these documents, upon which the Department may rely for the purpose of issuing the ITP and entering into a Streambed Alteration Agreement, will comply with CEQA. The Department provided comments on the draft SYP on February 3, 1997. On February 14, 1997 the Department responded to the Notice of Preparation with recommendations. On November 13, 1998 the Department provided comments on the DEIR. The Department also designated employees, who participated in meetings regarding the scope and content of the DEIR and FEIR.

COMPLIANCE WITH OTHER LAWS

This ITP contains the Department's requirements for the Project pursuant to CESA and does not create an entitlement to proceed with the Project. PALCO is responsible for complying with all other applicable state, federal and local laws.

NOTICES

All notices and other communications that are required to be in writing shall be delivered personally, by courier, by telecopy with confirmation provided, or by first-class or certified mail, return receipt requested. Notices or transmittals shall be deemed delivered upon the earlier of

actual receipt or three days after posting by certified mail, if delivered to the following addresses or such other addresses as may subsequently be provided by the Department or PALCO in writing:

The Pacific Lumber Company

Mr. John Campbell, President and Chief
Executive Officer
The Pacific Lumber Company
125 Main Street
P.O. Box 37
Scotia, CA 95565

Copy to:

Mr. Dale Head, Esq.
Managing Counsel - Environmental and
Litigation
The Pacific Lumber Company
5847 San Felipe, Suite 2600
Houston, TX 77057

Scotia Pacific Company LLC

Mr. John Campbell, President and Chief
Executive Officer
Scotia Pacific Company LLC
125 Main Street
P.O. Box 37
Scotia, CA 95565

Copy to:

Mr. Dale Head, Esq.
Managing Counsel - Environmental and
Litigation
Scotia Pacific Company LLC
5847 San Felipe, Suite 2600
Houston, TX 77057

Salmon Creek Corporation

Mr. John Campbell, President and Chief
Executive Officer
Salmon Creek Corporation
125 Main Street
P.O. Box 37
Scotia, CA 95565

Copy to:

Mr. Dale Head, Esq.
Managing Counsel - Environmental and
Litigation
Salmon Creek Corporation

5847 San Felipe, Suite 2600
Houston, TX 77057

Department

Regional Manager
Northern California - North Coast Region
601 Locust Street
Redding, CA 96001

Copy to:

General Counsel
Legal Affairs Division
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

CONTACT PERSON

As indicated above, the contact person for each of the three PALCO entities is:

Mr. John Campbell
125 Main Street
P.O. Box 37
Scotia, CA 95565

AGENT FOR SERVICE OF PROCESS

The agent for service of process for each of the three PALCO entities is as follows:

The Pacific Lumber Company

The Prentice-Hall Corporation System, Inc.
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Scotia Pacific Company LLC

Corporation Service Company d/b/a CSC-Lawyers
Incorporating Service
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Salmon Creek Corporation

The Prentice-Hall Corporation System, Inc.
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

ISSUED BY THE DEPARTMENT OF FISH AND GAME on March 1, 1999.

By:


L. RYAN BRODDRICK
Chief Deputy Director


Approved as to
legal form and sufficiency


ANN S. MALCOLM
Acting General Counsel

Acknowledgment

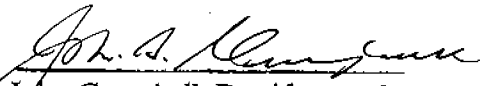
The undersigned representative of the Pacific Lumber Company, Scotia Pacific Company LLC, and Salmon Creek Corporation acknowledges receipt of this ITP and, by signing, accepts and agrees to comply with all terms and conditions contained therein:

By:


John Campbell, President and
Chief Executive Officer
The Pacific Lumber Company


Date: March 15th, 1999

By:


John Campbell, President and
Chief Executive Officer
Scotia Pacific Company LLC

Date: March 15th, 1999

By:


John Campbell, President and

Chief Executive Officer
Salmon Creek Corporation

Date: March 15th, 1999